IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 14726 of 2005

Between:

Abdul Sheik Maqbool, S/o.Late A.S.Fareed ,
R/o.Door No.49-38-14/8, Akkayyapalem, Visakhapatnam.

..... PETITIONER

AND

1. Visakhpatanma Municipal Corporation, Rep by its Commissioner, Tenneti Bhavan, Asilimetta Junction, Visakhapatnam.

2. Town Planning Officer, Tenneti Bhavan, Asilimetta Junction, Visakhapatnam Municipal Corporation, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in obstructing the petitioner while proceeding with the construction in respect of an extent of 551.25 Square Yards in Survey No.52/2 of Allipuram Extension Ward, Visakhapatnam within the peripheral limits of Municipal Corporation of Visakhapatnam as arbitrary, illegal and Violative of Articles 14, 21 and 300-A apart from being violative of Principle of natural justice and against all cannons of law and justice and consequently direct the respondents to permit the petitioner to proceed with the construction as per the plan submitted by the petitioner

Counsel for the Petitioner:MR.SIVALENKA RAMACHANDRA PRASAD, Advocate

Counsel for the Respondent Nos.1 & 2: MR.N.RANGA REDDY, Advocate

The Court at the admission stage made the following :

O R D E R:

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This writ petition is filed for declaring the action of the respondents in obstructing the petitioner from proceeding with the construction in respect of an extent of 551.25

square yards of land in S.No.52/2 of Allipuram Extension Ward, Visakhapatnam within the peripheral limits of Municipal Corporation of Visakhapatnam as arbitrary, illegal and violative of Articles 14, 21 and 300-A apart from being violative of principles of natural justice and against all cannons of law and justice and for a consequential direction to the respondents to permit the petitioner to proceed with the construction as per the plan submitted by him.

It is the case of the petitioner that he is the absolute owner of an extent of 551.25 square yards of land situated in S.No.52/2 of Allipuram Extension Ward, Visakhapatnam within the peripheral limits of Municipal Corporation of Visakhapatnam, by means of a registered sale agreement-cum-General Power of Attorney dated 28.08.1992. There after, the petitioner made an application before the respondent-Corporation seeking permission, approval and sanction of the proposed plan. By making an endorsement, dated 30.11.2002, the Corporation refused the application of the petitioner on the pretext that the site under reference is an open space and a part of the land was marked as red as per the lay out in T.P.No.13/75, Allipuram Extension Ward. There after, the petitioner made another application before the respondent-authorities by enclosing necessary plans along with a Demand Draft. On 01.12.2003, the Corporation made an endorsement to the effect that 'returned the building permission/plan of the petitioner' stating that as per the document the proposed site is not tallying with the extent of the land of 526.28 square meters as the applicant submitted the lay out for only 334.56 square meters of land. On 11.03.2004 the petitioner made another application before the Director of Town Planning, Hyderabad, for granting building permission. The Office of the Director of Town Planning, Hyderabad issued a letter dated 04.05.2004 to the petitioner stating that he has to obtain a copy of the lay out plan from the Visakhapatnam Corporation as it is available with them only. In the lay out plan the said property is shown as private land. On 11.06.2004 the petitioner submitted a detailed letter to the VUDA requesting for clarification of the said site and for

sanction of the plan. On 16.07.2004 the Municipal Commissioner, Visakhapatnam Municipal Corporation, Visakhapatnam informed the petitioner that it is a private lay out and the said site is located in the approved lay out and it may further be taken into account while approving the building plan as per Rules. On 15.12.2004 the petitioner made another application before the Municipal Commissioner, Visakhapatnam Municipal Corporation, requesting to supply the lay out plan copy. As no action was taken by the respondent authorities, the petitioner filed a suit in O.S.No.195 of 2005 on the file of the Principal Senior Civil Judge, Visakhapatnam against the Visakhapatnam Municipal Corporation, seeking declaration that the plans submitted by the petitioner are deemed to have been approved by operation of law and for a consequential permanent injunction restraining the defendants from ever interfering with his peaceful possession and enjoyment of the suit schedule property. The petitioner also sought for temporary injunction in I.A.No.297 of 2005 in which, the Corporation filed counter, but no orders were passed so far. There after, the petitioner submitted an application, dated 15.12.2004 before the first respondent seeking necessary action. As no action was taken against the said application, he submitted another application, dated 10.02.2005 under certificate of posting. As the respondents did not pass any orders on the said application of the petitioner, he started construction of the building as per the plan. When the respondents are trying to obstruct the construction of the building, this writ petition is filed.

The learned counsel for the respondents brought to my notice a decision of this Court reported in *ADVOCATE GENERAL VS. STATE OF A.P. & OTHERS* wherein a learned Single Judge of this Court observed as follows:

> "*In case an allegation is made in the suit as well as in the affidavit accompanying interlocutory application for* ***ex parte ad interim*** *injunction that municipal authorities are trying to demolish without issuing notice and without passing any orders, even then the Civil Court should not pass an* ***ex parte ad*** *interim order. The matter can be adjourned to next day to enable learned Standing Counsel for Municipality or local authority to get instructions in the matter as to*

what is the correct position. In any event, when an interim order is passed either ordering Bstatus quo or ordering ***ad interim*** *injunction the Civil Court must be careful to see that the plaintiff does not take advantage of the* ***status quo*** *order and completes construction to report* ***fait accompli*** *rendering the suit infructuous. Invariably and without exception Civil Court should prohibit plaintiff also from making any construction pending suit. Under no circumstances a plaintiff can be allowed to proceed with the construction in the guise of interlocutory injunctions. That would defeat the very purpose for which the Civil Court is vested with incidental and supplemental powers under Part-III and Part-VI of the CPC as well as Order 39 Rules 1 and 2 . Be it noted, that the Civil Court is vested with powers to pass interlocutory orders to* ***be just and convenient".***

The petitioner did not file any copy of the lay out to know about the nature of the site or explain about the total extent of the land. Hence, I am not able to come to a just conclusion that he has satisfied all the requirements for considering his case. As the respondent by letter dated 01.12.2003 already informed the petitioner that he should have satisfied the requirements, the petitioner instead of approaching this court should have satisfied the respondent authorities by producing necessary documents.

Under the above circumstances, I deem it appropriate to dispose of the writ petition with a direction to the respondents to consider the application of the petitioner and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. Till such time, the petitioner is directed not to go ahead with the construction.

The writ petition is accordingly disposed of. No costs.

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E.DHARMA RAO J.,

Dt.08.07.2005

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To

1. Visakhpatanma Municipal Corporation, Rep by its Commissioner, Tenneti Bhavan, Asilimetta Junction, Visakhapatnam.

2. Town Planning Officer, Tenneti Bhavan, Asilimetta Junction, Visakhapatnam Municipal Corporation, Visakhapatnam.

3. 2 CD copies

4. 1 CC to MR.SIVALENKA RAMACHANDRA PRASAD, Advocate

5) 1 CC to MR.RANGA REDDY, Advocate